

**Croley Coal Corporation and South Harlan Coal Co., Inc. and Southern Labor Union, Local 206 and Stanley Collins.** Cases 9-CA-16942 and 9-CA-16998

15 March 1984

# **SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 3 August 1982 the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding<sup>1</sup> in which it directed, inter alia, that Croley Coal Corporation (herein Respondent Croley), its officers, agents, successors, and assigns, offer immediate and full reinstatement of certain employees and to make them whole for any loss of pay they may have suffered resulting from Croley's unfair labor practices against them in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. On 31 March 1983 the United States Court of Appeals for the Sixth Circuit issued its judgment enforcing in full the reinstatement and backpay provisions of the Board Order.<sup>2</sup>

On 18 August 1983 the Regional Director for Region 9 issued a backpay specification and notice of hearing. In addition to alleging the amount of backpay due, the specification named South Harlan Coal Co., Inc. (herein South Harlan) as an alleged successor and/or joint employer of Respondent Croley and therefore jointly and severally liable with Croley for the backpay due. Respondent Croley and its attorney were duly served with the specification. Service was made on Ray Jackson and Rudy Yessin, Esq., for South Harlan. Neither the Respondent nor South Harlan filed an answer to the allegations in the specification. On 13 September 1983 the General Counsel issued an order correcting backpay specification and notice of hearing which rescheduled the hearing for 1 hour earlier. It was served on Croley, its attorney, South Harlan and Rudy Yessin.

On 29 September 1983 counsel for the General Counsel filed with the Board a motion to transfer proceeding to the Board and a Motion for Summary Judgment. On 6 October 1983 the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be

granted. The Notice to Show Cause was duly served on the Respondent's attorney of record. It was also served on Rudy Yessin but not on Mr. Jackson or any other officer or employee of South Harlan.

Again, Respondent Croley failed to reply. South Harlan, however, filed a timely response to which it appended its answer to the backpay specification denying that it is a successor and/or joint employer of Croley.

Upon the entire record in this proceeding, the Board makes the following

## **Ruling on the Motion for Summary Judgment**

Section 102.54(c) of the Board's Rules and Regulations provides in relevant part with respect to a backpay specification:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto.

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification served on Respondent Croley and South Harlan on 18 August 1983 specifically states that the Respondent and South Harlan shall, within 15 days of the date of the specification, file an answer with the Regional Director of Region 9. If the answer fails to deny the allegations in the specification in the manner required by the Board's Rules and Regulations and this failure is not adequately explained, such allegations shall be deemed admitted as true and Respondent Croley and South Harlan shall be precluded from introducing any evidence controverting them.

Since Respondent Croley did not file a timely answer and offered no explanation for its failure to do so, the Board, pursuant to the above rules, finds the allegations in the specification fixing the amount of backpay owed the discriminatees to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment as to Croley and order that payment be made by it to each discriminatee as set forth below.

In its response to the Notice to Show Cause, South Harlan alleges that the backpay specification was erroneously sent to "Ray" Jackson, rather than Roy Dan Jackson. Since South Harlan assertedly

<sup>1</sup> Since no exceptions were filed, the judge's decision automatically became the decision of the Board pursuant to Sec. 102.48(a) of the Board's Rules and Regulations. (Not reported in Board volumes.)

<sup>2</sup> *NLRB v. Croley Coal Corp.*, enf. mem. 709 F.2d 1506 (6th Cir. 1983).

had no knowledge of the underlying unfair labor practice proceeding against Croley, Jackson's employees assumed the service was in error.<sup>3</sup> South Harlan also contends that it never received the order correcting backpay specification. Rather, as the affidavits of service demonstrate, the General Counsel repeatedly sent documents concerning the backpay proceeding to Rudy Yessin, Esq. who had never entered an appearance for South Harlan. In addition, Yessin states by affidavit that he informed the field examiner from Region 9 in early 1983 that he could not represent South Harlan because he represents James Croley, Respondent Croley's president.

South Harlan's attorney, Otis Doan, alleges that as attorney for South Harlan he was notified on 1 October 1983 that a hearing had been scheduled for 11 October and that South Harlan could be liable for the actions of Respondent Croley. He immediately telephoned counsel for the General Counsel who explained that the pleadings had been sent to Rudy Yessin. After Doan had put himself in contact with Rudy Yessin, Yessin informed him that the Notice to Show Cause had issued. South Harlan thereupon promptly complied with the Notice to Show Cause, appending to its response an answer to the backpay specification.

In light of all these circumstances, we find that no purpose would be served by denying South Harlan an opportunity to present evidence at a hearing on the issue of its derivative liability. We therefore deny the General Counsel's Motion for Summary Judgment as to South Harlan and direct

that South Harlan's answer to the backpay specification be accepted.

### ORDER

The National Labor Relations Board hereby orders that the Respondent Croley Coal Corporation, Harlan, Kentucky, its officers, agents, successors, and assigns, shall make whole each of the discriminatees named below by payment to each of them the amount set forth next to his name, plus interest computed according to *Florida Steel Corp.*, 231 NLRB 651 (1977), less any lawful tax withholdings.<sup>4</sup>

Hirman Daniel, Jr.	\$ 3,393.57
Clifford Lee	11,514.48
Larry Collins	16,729.48
James Miller	12,091.77
Stanley Collins	3,070.88
Stephen Alan Vaughn	10,222.11
Charles Howard	8,324.88
Joe Watkins	3,699.20
David Caldwell	29,077.84
Phillip Daniel	6,878.84
Steve Farmer	2,124.00
Jimmy Crawford	2,851.49
Robert Nix	846.56
Donnie Green	1,932.00
Roger Colinger	3,539.00

IT IS FURTHER ORDERED that this proceeding be remanded to the Regional Director for Region 9 for the purpose of arranging for a hearing before an administrative law judge on the issue of the liability of South Harlan Coal Company as a successor and/or joint employer of Respondent Croley.

<sup>3</sup> Counsel for the General Counsel does not allege in his motion that he further made South Harlan's representatives aware by followup letter or telephone call of its obligation to file an answer and the consequences of a failure to do so.

<sup>4</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).